

STATE OF MICHIGAN
COURT OF APPEALS

GREEN OAKS MHC and KENNETH B.
LIPSCHUTZ,

UNPUBLISHED
May 17, 2012

Plaintiff-Appellee,

v

TOWNSHIP OF GREEN OAK,

No. 301596
Livingston Circuit Court
LC No. 98-016944-CZ

Defendant-Appellant.

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURIAM.

In this consent judgment enforcement case, defendant Township of Green Oak appeals the trial court's order denying defendant's motion to hold plaintiffs in contempt for violation of certain terms in a consent judgment between the parties. Defendant also challenges the trial court's interpretation of the term "new" as it relates to the manufactured homes permitted by the consent judgment. We affirm in part and reverse in part and remand for proceedings consistent with this opinion.

Defendant argues that the trial court abused its discretion by failing to hold plaintiffs in contempt where plaintiffs knowingly and intentionally failed to comply with section 2.2(c) of the consent judgment. We disagree.

We review a trial court's decision regarding a contempt motion for an abuse of discretion. *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007). Moreover, a trial court's factual findings are reviewed for clear error and questions of law are reviewed de novo. *Id.* The abuse of discretion standard recognizes that there will be circumstances where there is no single correct outcome and which require us to defer to the trial court's judgment; reversal is warranted only when the trial court's decision is outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006); *Porter v Porter*, 285 Mich App 450, 454-455 (2009).

A trial court is empowered with the inherent right to punish all contempts of court. MCL 600.1701 *et seq.*; *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 499; 608 NW2d 105 (2000). This authority is also recognized by statute in MCL 600.1701. That provision of the Revised Judicature Act provides, in pertinent part:

The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect of duty or misconduct in all of the following cases:

* * *

(g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court. [MCL 600.1701(g)].

The primary purpose of a court's contempt power is to preserve the effectiveness and sustain the power of the courts. *In re Contempt of Dudzinski*, 257 Mich App 96; 667 NW2d 68 (2003). The trial court's refusal to find plaintiffs in contempt in the present case is consistent with the following principles stated in *Id.* at 109 (internal citations omitted):

"The contempt power is awesome and must be used with the utmost restraint." The courts have the responsibility to apply the contempt power judiciously and only when the contempt is clearly and unequivocally shown. [*Id.* at 109].

Here, plaintiffs argued that any violation of the consent judgment was unintentional and based on differing understandings of terms in the consent judgment. We conclude that the trial court's ruling was within the range of principled outcomes and so, was not an abuse of discretion.

Defendant next argues that the trial court erred when it defined the word "new," as contained in the consent agreement, in a manner that did not reflect the intent of the parties. We agree.

A trial court's decision to enforce or interpret a consent judgment is reviewed for an abuse of discretion. *Trendell v Solomon*, 178 Mich App 365, 370; 443 NW2d 509 (1989). The rules of contract interpretation apply to consent judgments. *Young v Robin*, 146 Mich App 552, 557-558; 382 NW2d 182 (1985).

Defendant asserts that the trial court's interpretation of the word "new," as used in section 2.2(c), was erroneous. Section 2.2(c) required that "[a]ll manufactured homes in the development . . . will be new, or a maximum of two years old . . ." The trial court had initially defined "new" as meaning "manufactured homes that have not been previously titled." However, defendant moved for reconsideration. According to the court's order addressing that motion, defendant argued that "since this Court's June 24, 2010 ruling, plaintiffs have obtained permits to install a 2007 manufactured home which has never been titled but which was used for residential purposes for almost two years." The court further described defendant's argument:

Noting that a dealer can rent, lease, or transfer a unit without titling becoming an issue; Defendant presents the argument that the Court's definition of new has created a loophole, which plaintiff is using to move older, not previously titled units into the development. Defendant asserts that the existence of a title or certificate of ownership for a manufactured home alone, is not a sufficiently reliable factor for determining whether a unit is new for purposes of Section 2.2(c). Defendant further notes that all states title manufactured homes.

In response to that argument, the court revised its definition, now defining “new” as a manufactured home “not previously occupied for any purpose.” However, although the court changed the definition in response to that particular argument, it nonetheless did not accept defendant’s previously stated argument that “new” should be measured by the model year of the mobile home and that the model year should be the same as the year in which it is installed in the park.

Defendant argues that the last definition articulated by the court still “leaves open a loophole for older previously unoccupied units to be characterized as ‘new.’” Defendant asserts that a home could sit in a dealer’s inventory for many years and still be considered “new” under the trial court’s definition because it had not yet been occupied. Defendant further argues that the trial court’s definition failed to give any consideration to the parties’ intent as that intent is revealed by looking at the terms of the consent judgment as a whole.

We agree. Without considering the language of the consent judgment itself, defining a home as “new” in terms of whether it was ever occupied may seem reasonable at first glance, but so does defining it in terms of when it is titled or what the model year is. However, the question is not which definition is reasonable; it is which one reflects the intent of the parties as determined from the language of the consent judgment.

Consent judgments are construed the same as contracts. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). Construction of a contract is reviewed de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). “The fundamental goal of contract interpretation is to determine and enforce the parties’ intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement.” *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527; 740 NW2d 503 (2007).

The trial court came to its definitions without any reference to the language of the consent judgment. Defendant asserts that the language of section 2.2(c) clearly indicates the parties’ intent that no manufactured home over two years old ever be permitted in the development, and that the court’s defining “new” in terms of whether the unit was ever occupied permits plaintiff to move in units that may have never been occupied, but might be of a model year greatly exceeding two years old. The trial court’s definition is at odds with the findings it made when it ruled on the meaning of “2 years old.” The court based that conclusion on the findings that “[t]he purpose is to keep new updated units,” and “as well as much as possible a nice looking, updated, environmentally sound neighborhood for people to live in.” Allowing a manufactured home into the park that had never been occupied, but that was ten years old, for instance, would not meet the intent of having updated units.

Defendant also relies on section 2.2(b) of the consent judgment, which states,

Development and occupancy will be permitted in stages. There shall be a maximum of 200 sites occupied during the first 2 years after entry of this Consent Judgment. Thereafter, the remainder of the sites will be occupied over a 3 year period, with a maximum of 180 additional sites permitted annually. Occupancy shall be phased in over a 5 year period from the date of entry of this Consent Judgment.”

Defining “new” in terms of model year is consistent with the expressed intent of full occupancy within five years together and the rolling two-year age restriction. The circuit court erred in defining “new” in terms of previous occupancy.

Affirmed in part and reversed in part and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Michael J. Talbot

/s/ Patrick M. Meter